IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

WP(C).No. 10585 of 2006(I)

PETITIONER:

ASOK KUMAR I.A., S/O. E.K.ACHUTHAN.
ENCHIPARAMBIL, OOZHAKKODE, ARAKKUNNAM P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ.

RESPONDENTS:
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1. **STATE OF KERALA, REP. BY THE SECRETARY**
   TO GOVERNMENT, PERSONAL AND PUBLIC WORKS
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE CHIEF ENGINEER (ADMINISTRATION)**
   P.W.D., THIRUVANANTHAPURAM.

3. **KERALA PUBLIC SERVICE COMMISSION,**
   REP. BY THE SECRETARY, KERALA PUBLIC SERVICE
   COMMISSION, PATTOM, THIRUVANANTHAPURAM.

4. **THE DISTRICT OFFICER,**
   KERALA PUBLIC SERVICE COMMISSION, ERNAKULAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC,
GOVERNMENT PLEADER SRI. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/09/2007,ALONG WITH W.P.(C). NOS. 9004/2005,30669/2005, 3682/2006 & 9171/2006 ,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.10585/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT PAGES OF THE RANKED LIST.

EXT.P.2: COPY OF THE ORDER DTD. 09/12/2005 IN I.A. 14663/2005 IN W.P.(C). NO.9004/2005.

EXT.P.3: COPY OF THE VACANCY POSITION OF LDC UNDER NH (R) SUB DIVISION, KOTHAMANGALAM.

EXT.P.4: COPY OF THE VACANCY POSITION OF LDC UNDER NH (R) SUB DIVISION, ALUVA.

EXT.P.5: COPY OF THE VACANCY POSITION OF LDC IN PWD ROADS AND BRIDGES UNDER CENTRE CIRCLE, ALUVA.

RESPONDENT'S EXHIBIT:

EXT. R2.A: COPY OF THE G.O. (P) 269/2003/LSGD DT. 05/09/2003.

//TRUE COPY//

prv.

V.GIRI,J.

W.P.(C) Nos. 30669 of 2005, 3682, 9171 and 10585 of 2006
and W.P.(C)NO.9004 of 2005

Dated this the 20th day of September, 2007

JUDGMENT

Common issues arise for consideration in all these writ petitions and the writ petitions are disposed of by a common judgment. For the sake of convenience, reference is made to certain orders passed in Writ Petition No.9004/2005 as also W.P.(C)No.3682 of 2006.

2. The Public Service Commission issued a notification inviting applications from eligible persons for appointment to the post of Lower Division Clerk in various departments of the Government. A rank list was published on 31.12.2002 and therefore it was to expire on 31.12.2005.

3. On 9.12.2005, an interim order came to be passed in I.A.14663/2005 in Writ Petition No.9004/2005 to the following effect:

> **"On an oral submission by Mr.N.N.Sugunapalan, Senior Advocate, I implead the Chief Engineer (Admn.) PWD, Trivandrum as Additional R23.**
>
> **2. Having regard to the submissions of Mr.N.N.Sugunapalan. Learned Senior Counsel on behalf of the petitioners the affidavit in support of the I.A. and the information disclosed by Exts..P3,P4 and**

> **P5, there will be an interim direction to additional R23 to report to the PSC as early as possible and at the latest by 18.12.2005 all the vacancies for the post of LD Clerk which apparently exist as per Exts.P3,P4 and P5. The PSC need not issue advice memos in respect of those vacancies for the time being."**

4. It is the common case that pursuant to the interim order issued by this Court and in compliance with the same, additional 23rd respondent in Writ Petition No.9004/2005 sent an intimation to the PSC, reporting 30 vacancies from the PWD. It is stated by the PSC in their counter affidavit that even in the intimation so sent, it was made clear that the vacancies are being reported pursuant to the interim order passed by this Court and that there are actually no vacancies as such in the department to be reported.

5. Reference in this regard, at this juncture, could be made to Ext.P14 copy of letter issued by the District Officer, PSC Ernakulam on 6.1.2007, produced along with I.A.1859/2007 in Writ Petition No.3682/2006. Ext.P14 seems to be an information given by the District Officer of the PSC under the Right to Information Act. It states that altogether 10 vacancies were

reported from the Treasury Department, Agriculture Department (Soil Conservation) Water Resources, Vocational Higher Secondary School and Collegiate Education. The intimation regarding reporting of the vacancies is seen to have been despatched from the concerned department prior to 31.12.2005. But in all those cases, intimation was received at the office of the District Officer, PSC, Ernakulam, after 31.12.2005 and in some cases it was received only on 7.1.2006.

6. Taking note of the fact that this Court had directed the additional 23rd respondent in O.P.9004/2005 to report 23 vacancies and thus such vacancies have actually been reported prior to 31.12.2005, and further taking note of the fact that as per Ext.P14, it is seen that 10 vacancies did arise prior to 31.12.2005, this Court was moved on 1.3.2007. A common interim order was passed in all these cases on 1.3.2007 directing the PSC to advise 10 candidates according to the turn from the rank list which expired on 31.12.2005. This was directed to be done within three weeks and the authorities concerned were also further directed to appoint candidates immediately on receipt of the advice letter.

7. The Public Service Commission sought for a review of the order dated 1.3.2007. By Order dated 6.6.2007, this court reviewed the order. The relevant portion of the Order dated 6.6.2007 is extracted hereunder.

> **"This order was passed taking into account the pendency of 30 vacancies reported by the PWD. But, each department is a separate unit, for appointment and promotion. The vacancies that has arisen in one department cannot be filled up based on the requisition from another department. Further, in view of the Full Bench decision of this Court in Vimala Kumari v State (1994(2) KLT 47(FB), the PSC cannot advise candidates, if the requisition for the same reaches it, after the expiry of the list. In view of the above position, I feel that the direction issued by this Court on 1.3.2007 should be recalled and vacated. It is ordered accordingly".**

8. The Order dated 6.6.2007 by which the earlier order dated 1.3.2007 is reviewed and recalled, in so far as it related to the petitioner in Writ Petition No.3682/2006 was taken up in appeal before the Division Bench as Writ Appeal No.2033/2007. The order dated 6.6.2007 was not interfered with but the Division Bench proceeded to dispose of the appeal in the following

manner. Order of the Division Bench, dated 6.6.2007, is extracted hereunder:

> **Appeal is disposed of directing that the writ petitioner be heard untrammeled by the observations made by the learned Single Judge in the interim order dated 6.6.2007.**

It is thereafter that the writ petitions came up for hearing and the writ petitions have been heard together.

9. I heard learned Senior Counsel N.N.Sugunapalan in Writ Petition No.9004/2005, Mr.Kaleeswaram Raj in Writ Petition Nos.3682/2006 and 10585/2006, Mr.Tojan J.Vathikulam in Writ Petition No.9171/2006, Mr.Unnikrishnan in Writ Petition No.30669/2005, learned Senior Government Pleader Mr.Nandakumar on behalf of the respondents and Mr.Alexander Thomas appearing on behalf of the Public Service Commission.

10. Mr.Kaleeswaram Raj submitted that this court had, as per the first interim order dated 9.12.2005, directed the Chief Engineer (Admn.) of the PWD to report to the Public Service Commission as early as possible, the vacancies which apparently exist as per Ext.P3, Exts.P4 and P5. The Chief Engineer had actually reported 30 vacancies to the Public Service commission

and the Public Service Commission had received intimation in that regard before the expiry of the rank list prior to 31.12.2005. No doubt, the chief Engineer had added that the reporting is done only to secure compliance with the Order dated 9.12.2005 and the fact that no vacancy was existing in the PWD and therefore no vacancies were to be reported pursuant to the Order dated 9.12.2005.

11. It may be noted, at this juncture, that PWD had actually reported vacancies even in November 2005 and altogether they had reported 44 vacancies during the currency of list.

12. Mr.Kaleeswaram Raj further contended that even if there were no vacancies in the PWD to be actually reported and it can be seen from Ext.P14 produced in Writ Petition No.3682/2005 that 10 vacancies in other departments were available to be reported prior to 31.12.2005 and that the intimation received from the Chief Engineer of the PWD can be taken note of for the limited purpose of notionally finding that there were 10 more vacancies, available to be filled up from among the candidates in the rank list which was to expire by 31.12.2005,even if it is assumed that those 10 vacancies did not actually exist in the

PWD.

13. He further contended, with reference to the counter affidavit filed by the additional 23rd respondent on 6.6.2006 that as a matter of fact 23 vacancies had existed in the PWD prior to 31.12.2005 but the said 23 vacancies were earlier occupied by persons who had been deployed to the Local Self Government Department, for a period in excess of three years and therefore those 23 vacancies must be treated as substantive vacancies, to be reported to the Public Service Commission in terms of Rule 5 of part II of KS&SSR.

14. Mr.Sugunapalan, learned Senior counsel in Writ Petition No,9004/2005 contended that it seems that vacancies had existed in other departments apart from the PWD. This can be taken note of by this Court notwithstanding the expiry of the rank list and that in circumstances where the Order dated 9.12.2005 had directed 30 vacancies to be reported from the PWD, an attempt should be made to find out whether there were actually 30 vacancies in other departments existing prior to 31/12/2005 and if so direction should be issued to the appointing authorities to appoint sufficient number of persons, from the rank list even if

the rank list has expired as such.

15. Learned Senior Government Pleader Mr.Nandakumar contended that the list admittedly time expired on 31.12.2005. Another rank list was published and it came into force on 1/1/2006. The same is being operated upon. By order dated 9.12.2005 in Writ Petition NO.9004/2005, this Court directed that vacancies be reported at a point of time when there were actually no vacancies in the PWD. It is made clear in the counter affidavit filed by the Chief Engineer on 6/6/2006. In so far as the 23 vacancies referred to by the learned counsel for the petitioner in Writ Petition NO.3280/2006, reference in this regard is made to the order of the Government marked as Ext.R1(a) along with the counter affidavit, pointing out that essentially 23 persons from the PWD have been deployed in the Local Self Government Department. Reference in this regard is made to sub clauses (xv) and (xviii) of clause-4 of the Government Order G.O.(P) 186/2000/LSGD dated 4.7.2000, which reads as follows:

> ***xv Deployed posts would continue to be treated as part of the original cadre for determination of supervisory posts of that cadre.***

> ***xviii The departments would be free to rationally re-organise the staff, left with them after deployment. But posts, which are deployed to local governments will not be filled up.***

Thus, the deployed persons are continued to be treated as part of the original cadre for determination of supervisory posts in that category. It is also made clear that the posts which are deployed to the Local Self Government will not be filled up. Therefore, the 23 posts, from which incumbents were deployed to the Local Self Government Department did not give rise to substantive vacancies within the meaning of Rule 5 of Part II of KS&SSR. There were no other vacancies in the PWD, to be reported pursuant to the interim order dated 9.12.2005 in Writ Petition No.9004/2005.

16. In so far as the 10 vacancies mentioned in Ext.P14 and Writ Petition No.3682/2006 are concerned, obviously, none of them were in the PWD. Had the intimation of the reporting of the vacancies reached the PSC during the currency of the rank list, this Court could have directed the PSC to advise candidates against those vacancies or in exceptional circumstances directed the appointing authorities to fill up those vacancies from the

persons who have been empaneled in the list. But 10 vacancies in the various departments noted in Ext.P14 cannot be linked to the reporting of vacancies which was made by the Chief Engineer, PWD(Admn.) pursuant to the interim order dated 9.12.2005. After all though selection was made by the PSC to the posts of L.D.Clerk in various departments, it cannot be denied that each department is a different unit and vacancy position is clearly dependent on the cadre strength in that department. In the circumstances, Mr.Nandakumar submits, that no further direction can actually be issued on the expiry of the rank list on 31.12.2005. Subsequent rank list is being operated, persons have been advised and vacancies have been filled up. No further direction can be issued in any one of these cases.

17. Two questions arise for consideration. Firstly, it has to be found out whether pursuant to the interim order dated 9.12.2005, when the Chief Engineer of the PWD sent an intimation to the PSC, reporting 30 vacancies with the rider that the vacancies actually do not exist, can this Court now issue a further direction to the appointing authorities to appoint any person who was included in the time expired rank list. The second

question is whether even if no vacancy had actually existed in the PWD, can the intimation given by the Chief Engineer of PWD, pursuant to the interim order dated 9.12.2005 which was received by the PSC prior to 31.12.2005 be treated as sufficient intimation for the purpose of directing the PSC to issue advice memos against 10 vacancies in various departments mentioned in Ext.P14 produced in Writ Petition No.3682/2006.

18. In so far as the first issue is concerned, to the question as to whether there were vacancies in the PWD which were reported prior to 31.12.2005, subsequent to the interim order dated 9.12.2005, a counter affidavit was filed by the Chief Engineer in both the writ petition Nos.9004/2005 and 3682/2006, explaining the vacancy position and further making it clear that during the currency of the rank list, 44 persons were advised to the vacancies of L.D.Clerk in PWD and that the last advise received in this regard was on 7.11.2005. No further vacancies existed in the PWD, it is categorically averred therein. A specific reference was made to the deployment of 23 persons from the PWD to the Local Self Government Department in the course of implementation of Ext.R1(a) Government order of 2000. Sub

Clauses 15 and 18 in Clause IV of the Government order had already been extracted. They make it clear that no substantive vacancy arises merely because an incumbent is deployed to the Local Self Government Department. It therefore evinced a conscious decision on the part of the Government not to treat a vacancy arising out of the deployment of an incumbent from the PWD (or any other department for that matter) to the LSGD as a vacancy of any character and therefore not to fill up that posts at all. The person who is deployed will continue to be treated as an incumbent in the parent department, which in the instant case is PWD and he will continue to draw his pay from the parent department. His lien in the parent department remains intact. What is involved is only deployment and not deputation. It is really a question of the Government deciding to manage the man power resources available, by deploying surplus staff from one department for service in another department. No vacancy arises on account of deployment and consequently there was no vacancy available in the PWD, to be reported pursuant to the interim order dated 9.12.2005.

19. The second issue is whether notwithstanding the fact

that no vacancy in the PWD, can the vacancy which admittedly existed, as noted in Ext.P14 produced in Writ Petition No.3682/2000 in other departments be taken note of for the purpose of issuing a direction either to the PSC to advise candidates against those vacancies or to the appointing authority to fill up those vacancies from persons were included in the time expired list. No doubt, intimation regarding the 10 vacancies noted in Ext.P14 had apparently been despatched from the parent office prior to 31.12.2005. But unfortunately the intimation is received by the PSC only subsequent to 31.12.2005. As held by the Full Bench of this court in ***Vimalakumari v State of Kerala*** (1994(2) KLT 47), it is only the request received by the PSC during the currency o the rank list that need be taken note of by the PSC for advise from the rank list in question. The Full Bench also took note of the fact that at any rate, a person does not aquire any vested right by a reason of his name being included in a rank list. It obviously is not possible to issue a direction to PSC to advise any candidate from the list which expired on 31.12.2005 for the purpose of filling up of those vacancies noted in Ext.P14.

20. In my view, nor is it possible to issue a direction to the appointing authorities, of those posts which are noted in Ext.P14, to appoint those candidates from the time expired list. It is not possible to link the conditional intimation given to the PSC to secure compliance with the interim order dated 9.12.2005, covering non-existant vacancies in the PWD, with the vacancies in any other department. After all though the post is common and selection procedure was also comprehensive, each department is entitled to be treated as separate. What is involved is reporting of a vacancy and obviously the existence of a vacancy is particular and peculiar in each department. This Court will not be justified in directing the Government to fill up the vacancies which had existed in other departments prior to 31.12.2005, taking note of the intimation given by the Chief Engineer of the PWD wherein no vacancies had existed prior to 31.12.2005, to be reported pursuant to the interim order dated 9.12.2005.

21. In the ultimate analysis, there does not seem to be any deliberate attempt on the part of the Government to evade compliance with the directions of this Court. Nor is there any attempt on the part of the PSC to refrain from advising any

candidate from a list, against any vacancies which had been reported during the currency of the list. Further a new list has been published. As noted by the Full Bench in **Vimalakumari**, there is no vested right in any person merely by inclusion in the rank list.

22. For all these reasons, there is no merit in the writ petitions. No further directions can be issued therein and **all the writ petitions are dismissed** without any order as to cost.

V.GIRI, JUDGE

css/